

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DOUGLAS WAYNE SIDES §
v. § CIVIL ACTION NO. 9:08cv36
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Douglas Sides, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Sides was convicted on April 30, 2007, of two counts of aggravated sexual assault of a child, for which he received a 35-year sentence. In his petition, he stated that he did not take a direct appeal, nor has he filed any state or federal petitions regarding his conviction. He expressly states that all of his grounds for relief are being presented for the first time and that he “has never presented anything before.” The on-line records of the Texas Court of Criminal Appeals confirm that Sides has not presented a petition for discretionary review or a state habeas corpus petition to that Court.

After review of the petition, the Magistrate Judge issued a Report on March 5, 2008, recommending that the petition be dismissed without prejudice for failure to exhaust state remedies. The Magistrate Judge also recommended that Sides be denied a certificate of appealability *sua sponte*. Sides received a copy of this Report on March 11, 2008, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the

unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

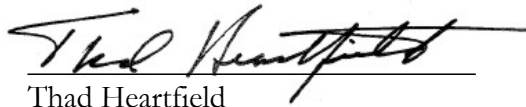
ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice. It is further

ORDERED that the Petitioner Douglas Sides is hereby DENIED a certificate of appealability *sua sponte*. The denial of the certificate of appealability shall have no effect upon Sides' right to exhaust his state remedies in any lawful manner, including but not limited to seeking habeas corpus relief from the trial court and the Texas Court of Criminal Appeals pursuant to Article 11.07 of the Texas Court of Criminal Procedure, nor shall it prevent him from refiling his habeas corpus petition in federal court in the event that he does not obtain relief from the courts of the State of Texas. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this the **29** day of **April, 2008**.


Thad Heartfield
United States District Judge